IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

OP.No. 32311 of 2002(V)

PETITIONERS:

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1. C.P.PUSHPAVALLY, DEEPA NIVAS,
   P.O.KOLACHERI, KANNUR.

2. VIJAYAN C., HEADMASTER, KOLACHERI
   A.U.P. SCHOOL, KOLACHERI P.O., KANNUR.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

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1. G.O.GEETHA, OTHAYOTH HOUSE,
   KOLACHERI P.O., KANNUR.

2. THE ASSISTANT EDUCATIONAL OFFICER,
   TALIPARAMBA P.O., KANNUR.

3. THE DISTRICT EDUCATIONAL OFFICER, KANNUR

4. STATE OF KERALA, REPRESENTED BY
   CHIEF SECRETARY, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. T.T. MAHMOOD
SRI.P.RAVINDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.54591 OF 2002 IN O.P.NO.32311 OF 2002
DISMISSED

11.9.2007 SD/- S. SIRI JAGAN, JUDGE.

APPENDIX

EXT.P1: TRUE COPY OF THE COMMUNICATION OF THE AEO, TALIPARAMBA DATED 20.7.2000.

EXT.P2: TRUE COPY OF THE COMMUNICATION BY THE D.E.O. DATED 17.1.2001.

EXT.P3: TRUE COPY OF THE COMPLAINT NO.261/2001 FILED BEFORE THE LOK AYUKTA.

EXT.P4: TRUE COPY OF THE ORDER OF THE LOK AYUKTA IN COMPLAINT NO.261/2001 DATED 4.4.2002.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NO.32311 OF 2002

DATED THIS THE 11th DAY OF SEPTEMBER, 2007

JUDGMENT

The 1st petitioner is the Manager of an aided U.P. School and the 2nd petitioner is the Headmaster of that school. They are aggrieved by Ext.P4 order of the Kerala Lok Ayukta passed in a complaint filed by the 1st respondent herein. In the complaint the 1st respondent raised two contentions, first is that the petitioners herein admitted under-aged students to the school and that they appointed teachers in the resultant vacancies by obtaining illegal gratification from the teachers. The Lok Ayukta itself by Ext.P4 order held that there is no evidence whatsoever to find the petitioners' guilty of taking illegal gratification for appointment of any teacher. The petitioners are now challenging inter alia the jurisdiction of the Lok Ayukta to pass Ext.P4 order. According to them under the Kerala Lok Ayukta Act, going by the definition of public servant in Section 2 (o), only the Chairman or Manager or Secretary or Correspondent of private school would come within the jurisdiction of the Kerala Lok Ayukta Act and not the Headmaster. The Headmaster is the sole authority relating to admissions. The Manager has nothing to do with the admission

process. In such circumstances, the Headmaster not being a person coming within the definition of 'public servant' in Section 2 (o) of the Act, the complaint could not have been proceeded with, is the contention raised.

2. The petitioners also raised a contention that under Chapter VI of the K.E.R. it is open to the parent or guardian of the school who cannot produce certified extract from the birth register to file a declaration of the age of the pupil who is sought to be admitted and the Headmaster has made the admissions only after obtaining appropriate declarations from the parents and therefore even otherwise the Headmaster could not have been found fault with.

3. The contention of the 1st respondent is that under Rule 3 of Chapter III of the K.E.R. the Manager is responsible to the department for the management of the institution and therefore, for the acts of the Headmaster the Manager also should be held responsible. He further submits that all what the Lok Ayukta has done, is to direct the Government to conduct an enquiry and to take appropriate action in the matter.

4. I have considered the rival contentions in detail. I shall first deal with the question of jurisdiction of the Lok Ayukta in this matter. Admittedly the jurisdiction of the Lok Ayukta extends, as regards 'public servant' are concerned, only to those persons

enumerated in Section 2(o) of the Act. As far as the subject matter of this writ petition is concerned Sub Clause (x) of Section 2(o) of the Act is relevant which reads thus:

> "(x) the Chairman or Manager or Secretary or Correspondent having control over the administration of a private school, whether under individual or cor-porate management, which receives or has received aid or grant from the Government under the Kerala Education Act, 1958 (6 of 1959), and the rules made thereunder;"

Therefore the jurisdiction of the Lok Ayukta extends only to the 1st petitioner who is the Manager of an aided private school. The Headmaster of an aided school would not come within the definition of 'public servant' and therefore the Headmaster could not have been proceeded against. That being so, the next question would be as to whether the Manager could have been held responsible for the admission made by the Headmaster, even if it is illegal. Rule 3 of Chapter III of the K.E.R. reads thus:

> "3. **Management to be vested in a Manager.-** (1) The Management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the department for the management of the institution.
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> (2) In the case of aided institution under individual management, the individual proprietor may be the Manager.
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> (3) In the case of aided institutions under Corporation management, the proprietory body may choose the Manager in accordance with the rules in that behalf referred to in Rule2.
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> (4) The Educational Agency shall be bound by the acts of the Manager."

5. The provisions relating to admission of pupils in schools are contained in Sub rule 1 of Rule 1 of Chapter VI of the K.E.R. which reads thus:

> "1.**Admission**:-[(1) No pupil shall be admitted in a school except on an application in Form 3 signed by his parent/guardian. The application shall be accompanied by a certified extract from the Register of Births showing the date of birth of the pupil, but in case where it is satisfactorily explained to the Headmaster why the said extract cannot be produced, a declaration from the parent/guardian or in the case of an orphan a certificate from a registered medical practitioner regarding the date of birth of the pupil shall be accepted. All such applications shall be filed separately in the records of the schools.
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> *Note:*-(1) In case where such declarations are given and accepted by the Headmaster, the parent/guardian shall declare that no change in the date of birth will be claimed at any future date]"

6. Rule 2 of Chapter VI relates to maintenance of admission register. Sub rule 2 of Rule 2 of Chapter VI states that when a pupil is admitted to a school, his name, date of birth, religion, community and other particulars as given in the application for admission shall be entered in the admission register and attested by the Headmaster. Rule 3 of Chapter VI relates to alteration of date of birth etc. There also applications for alteration of dates of birth have to be forwarded through the Headmaster. Under sub rule 3 and 4 of Rule 4 of Chapter VI, it is the Headmaster who is competent to admit any pupil. Going by Chapter VI, the

entire admission procedure is to be controlled by the Headmaster alone. The Manager has no role in the same. In fact there is no provision in the K.E.R. which empowers the Manager to interfere with the admission process at all. A reading of the K.E.R. would show that the Manager's powers are confined to the general administration of the school and maintenance of discipline in the school. In academic matters only the Headmaster is answerable to the department and not the Manger. That being so, as far as the admission procedure is concerned the Manager has no role to play at all and if the Headmaster makes any admission against the provisions of the Rules, the Manager cannot be held responsible. That being so, if the Manager cannot be held responsible for the acts of the Headmaster in respect of admission process the only finding of the Lok Ayukta being regarding the irregular admission made by the Headmaster, the order could not have been validly passed as the Lok Ayukta did not have jurisdiction over the Headmaster of a private school. That being so, I am satisfied that Ext.P4 order of Lok Ayukta is without jurisdiction and unsustainable. Accordingly, the same is quashed.

The original petition is allowed as above.

S. SIRI JAGAN, JUDGE

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